

FEB 13 2006

RYAN KROMHOLZ & MANION, S.C.  
ATTORNEYS AT LAW

Daniel D. Ryan  
 Joseph A. Kromholz  
 John M. Manion  
 Laura A. Dable  
 Daniel R. Johnson  
 Patrick J. Fleis  
 Melissa S. Hockersmith  
 Thomas J. Krumenacher

Arnold J. Ericson (Of Counsel)  
 Donald Cayen (Of Counsel)

Telephone: (262) 783-1300  
 Facsimile: (262) 783-1211  
 Toll Free: (800) 686-9333

Est. 1873

Mailing Address:  
 P.O. Box 26618  
 Milwaukee, WI 53226-0618

Building Address:  
 3360 Gateway Road  
 Brookfield, WI 53045

Fond du Lac Office  
 74 S. Main Street, Suite 103  
 Fond du Lac, WI 54935

Date: 13 February 2006

Coversheet + 3 Pages

RECIPIENT:

FACSIMILE:

U.S. Patent &amp; Trademark Office

(571) 273-8300

Regarding: U.S. Patent Application Serial No. 09/421,635  
 Title: Hand-Held Instruments that Access Interior Body Regions  
 Applicant: Reiley et al.  
 Docket No.: 1759.16690

Comments: Please see the attached Terminal Disclaimer regarding the above-referenced patent application.

From: Daniel D. Ryan / lsw  
 Ryan Kromholz & Manion, S.C.

CERTIFICATE OF TRANSMISSION VIA FACSIMILE

I hereby certify that this correspondence is being transmitted via facsimile to the United States Patent & Trademark Office, Fax No. (571) 273-8300 on 13 February 2006.

By Linda S. Wenzel  
 Linda S. Wenzel

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. This message may be an attorney-client communication, and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail. Thank you.

RECEIVED  
CENTRAL FAX CENTER

002

Customer No. 26308

FEB 13 2006

PATENT

Docket No. 1759.16690

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Reiley et al.  
 Serial No: 09/421,635  
 Filed: October 19, 1999  
 For: Hand-Held Instruments that Access Interior Body Regions

Group No.: 3763  
 Examiner: J. Maynard

**Commissioner for Patents**  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

**TERMINAL DISCLAIMER TO OBLIGATE  
A DOUBLE PATENTING REJECTION (37 CFR 1.321(c))**

**Identification of Person(s) Making This Disclaimer**

I, Daniel D. Ryan (Reg. No. 29,243)  
 (type or print names of all inventors or assigns or name of attorney signing disclaimer)

(a) represent that I am

an inventor of this invention.

an assignee of this invention.

**WARNING:** "If the patent or patent application is assigned to an organization, such as a corporation, partnership, university, government agency or similar entity, and the disclaimer is signed by the assignee, the assignee must comply with § 3.73(b)." Notice of Oct. 15, 1993, 1156 O.G. 54-61 at 56.

a representative authorized to sign on behalf of the assignee identified below.

**WARNING:** See the above "WARNING".

the attorney of record for this invention.

**NOTE:** The rules "permit an attorney or agent of record to sign a terminal disclaimer without the need to comply with § 3.73(b)." Notice of Oct. 15, 1993, 1156 O.G. 54-61, at 56.

02/14/2006 FMETEK11 00000072 062360 09421635

01 FC:1814 130.00 DA

**IDENTITY OF ASSIGNEE AND TITLE OF DISCLAIMANT**  
*(if applicable)*

**RECEIVED  
 CENTRAL FAX CENTER  
 FEB 13 2006**

The assignee is

Name of assignee Kyphon Inc.

Address of assignee 1221 Crossman Avenue  
Sunnyvale, California 94089

Title of disclaimant authorized to sign on behalf of assignee Attorney of Record

**EXTENT OF DISCLAIMANT'S INTEREST**

The extent of the interest in this invention that the disclaimant owns is in:

the whole of this invention.

a sectional interest in this invention, as follows:

**RECORDAL OF ASSIGNMENT IN PTO**  
*(if applicable)*

The assignment was recorded on March 18, 2002

Reel 012718

Frame 0944

Authorization for recordal of the assignment is separately attached.

A separate  
 "ASSIGNMENT (DOCUMENT) COVER SHEET" or  
 FORM PTO 1595 is also attached.

**ESTABLISHING RIGHT OF ASSIGNEE TO TAKE ACTION**  
*(if applicable)*

Attached is a CERTIFICATE UNDER 37 CFR 3.73(b) establishing the right of the assignee to take action in this case.

**DISCLAIMER**

The terminal part of the statutory term of any patent granted on the above-identified application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173 of:

United States Patent No. 6,575,919 as presently shortened by any terminal disclaimer (which patent is also assigned to Kyphon Inc. as evidenced by assignment recorded February 26, 2001, at Reel 011554/Frame 0986)

Any patent granted on application number \_\_\_\_\_

is hereby disclaimed, except as provided below, and it is agreed that any patent so granted on the above-identified application shall be enforceable only for, and during, such period that the legal title to said patent

FEB 13 2006

shall be the same as the legal title to

United States Patent No. 6,575,919

Any patent granted on application number \_\_\_\_\_

this agreement to run with any patent granted on the above-identified application and to be binding upon the grantee, its successors or assigns.

In making the above disclaimer, disclaimant does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of:

United States Patent No. 6,575,919, as presently shortened by any terminal disclaimer,

Any patent granted on application number \_\_\_\_\_

in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued in any matter or is terminated prior to expiration of its full statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

**FEE STATUS**  
(37 CFR 1.20(d))

Other than a small entity-fee \$130.00.

Small entity-fee \$65.00.

**FEE PAYMENT**

Attached is a check in the sum of \$\_\_\_\_\_

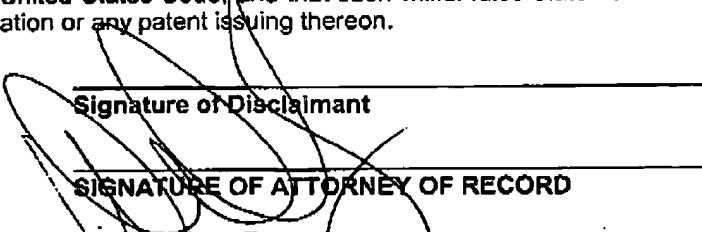
Charge Account 06-2360 for any fee deficiency.

Charge Deposit Account 06-2360 the sum of \$ \$130.00

A duplicate of this disclaimer is attached.

**DECLARATION**

As I am not a person registered to practice before the Office, I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under SECTION 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.



Signature of Disclaimant

**SIGNATURE OF ATTORNEY OF RECORD**

Daniel J. Ryan Esq  
 (type or print name of attorney)  
**RYAN KROMHOLZ & MANION, S.C.**  
 PO Box 26618  
 MILWAUKEE, WISCONSIN 53226

Date: February 13, 2006

Reg. No.: 29,243

Telephone: (262) 783 - 1300

Customer No. 26308